IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 109 of 1996.

Reserved on: 2.11.2007.

Date of decision: 7.12.2007.

Paras Ram ..... Appellant

Versus

State of H.P. ..... Respondent

Coram :

The Hon'ble Mr. Justice V.K. Ahuja, Judge.

Whether approved for reporting?[1] No.

For the appellant: Mr. K.D. Sood and Mr. Rajneesh K. Lal, Advocates.

For the respondent: Mr. Ashutosh Burathoki, Additional Advocate General.

V.K. Ahuja, J.

This is a second appeal filed by the appellant against the judgment and decree of the Court of learned District Judge, Hamirpur, dated 24.1.1996, vide which she upheld the judgment and decree of the learned Sub Judge Ist Class(II), Hamirpur, dated 31.1.1990, vide which the suit of the appellant was decreed partly and the relief of permanent injunction was granted in favour of the plaintiff and against the respondent/defendant restraining it from interfering in possession of the appellant over the suit land till the plaintiff is evicted under due process of law. The relief of declaration as prayed for by the appellant

[1]Whether reporters of Local Papers may be allowed to see the judgment? Yes.

was not granted in his favour that he was tenant or owner of the suit land.

Briefly stated the facts of the case are that appellant as plaintiff filed a suit for declaration and permanent injunction as against the respondent alleging that the plaintiff was owner in possession of the suit land comprised in Khasra Nos. 215/188 and 219/199 measuring 29 kanals 8 marlas. The plaintiff alleged that previously the land was owned by one Smt. Kapli Devi widow of Lalu and husband of Kapli Devi had got the land in lieu of bravery and after the enforcement of H.P. Ceiling and Land Holdings Act, the land was declared surplus by the order of the Collector on 24.9.1976 and mutation was also sanctioned. It was alleged that the plaintiff was a tenant under Kapli Devi and his status continued to be so even after the land was declared surplus. He alleged that he became the owner from the appointed date under the H.P. Tenancy and Land Reforms Act. Mutation No. 358 was also sanctioned in his favour and defendant/State was interfering in his possession over the suit land, hence the suit filed by him.

Defendant pleaded that the plaintiff was not a tenant over the suit land when the H.P. Ceiling and Land Holdings Act came into force and since the land was declared surplus and vested in the State of Himachal Pradesh, no tenancy could be created. But the plaintiff by misrepresentation of facts got the tenancy created in his favour in connivance with the revenue staff and also got the proprietory rights conferred upon him by a wrong order passed by the Land Reforms Officer which order deserves to be reviewed and as the possession of the plaintiff is unauthorized and illegal, therefore, he has to be ejected from the suit land after following the due course of law.

The learned trial Court held that the tenancy was created after the appointed day which was illegal and no proprietory rights could have been conferred upon the plaintiff and accordingly, the relief of declaration was not granted but the relief of permanent injunction was granted in his favour. Those findings were upheld by the learned first Appellate Court who also dismissed the cross appeal filed by the appellant against the order vide which he was not granted the relief of declaration.

I have heard the learned counsel for the parties and have also gone through the record of the case.

The submissions made by the learned counsel for the appellant were that since the plaintiff was proved to have been conferred the proprietory rights under the H.P. Tenancy and Land Reforms Act, he was entitled to the relief of declaration which was not granted in his favour by both the Courts below which findings are liable to be set aside. On the other hand, the learned Additional Advocate General had submitted that once the plaintiff was not a tenant on the appointed day and the land had vested in the State free from all encumbrances, no proprietory rights could have been conferred and since the order passed by the Land Reforms Officer was illegal the same was rightly ignored by both the Courts below.

A perusal of the record shows that the appeal was admitted on the substantial question of law as to whether defendant could set up a title to the suit land in the absence of the challenge to the order of the Land Reforms Officer conferring proprietory rights upon the plaintiff. It was also alleged that the Courts below have misconstrued the provisions of the H.P. Tenancy and Land Reforms Act as well as the H.P. Village Common Land (Vesting and Utilization)

Act and wrongly denied the relief of declaration in favour of the appellant.

I have gone through the judgments of both the Courts below. They have clearly observed that the plaintiff was not recorded as tenant on the appointed day i.e. 24.1.1971 under the H.P. Ceiling and Land Holdings Act, 1973. Therefore, the land had vested in the State of Himachal Pradesh having been declared surplus under the provisions of the Act as alleged by the plaintiff in the plaint itself which fact he has not denied. Once the land had vested in the State of H.P. no fresh tenancy could have been created after the appointed day and as per the discussion made by both the Courts below, the tenancy was created in favour of the plaintiff after the appointed day and, therefore, the said creation of tenancy can be said to be illegal just to ignore the provisions of the H.P. Ceiling and Land Holdings Act. According to the provisions of that Act once the land had vested in the State of Himachal Pradesh as surplus it was at the disposal of the State Government for utilizing the surplus area by allotment to landless persons or either eligible persons as provided in the Act. There are findings of fact in this regard by both the Courts below that the tenancy in favour of the plaintiff was created after the appointed day which creation was illegal since the land had vested in the State of Himachal Pradesh and mutation had also been sanctioned as per the order of the Collector dated 24.9.1976 vesting the land in favour of the State Government. Once the land had vested in the State Government and the creation of tenancy was after the appointed day, the conferment of proprietary rights of Land Reforms Officer can be said to be void order which had to be ignored. The Land Reforms Officer should have considered the provisions of the Act and once the land had vested in the State of Himachal Pradesh, he

had no right to confer the proprietory rights upon the plaintiff in view of the amendment made in the H.P. Ceiling and Land Holdings Act, 1973 also as per the proviso of Section 104 of the Act. The provisions of Section 104 relating to conferment of proprietory rights provide that this provision shall not apply to such land which is either owned or vested in the Government under any law, whether before or after the commencement of this Act. Thus, it is clear that no proprietory rights could have been conferred upon the plaintiff ignoring these provisions. Coming to this question that this plea could not have been taken by the defendant of setting up of title in view of the order of conferment of proprietory rights, once the State Government had initiated action under the provisions of the Ceiling Act to take possession and that proceedings had not culminated in passing of final order due to the filing of the present suit in the year 1987, this plea could have been taken by the defendant/State in their defence that there was an order of Collector dated 24.9.1976 vesting the surplus land in the State Government and as such, they could challenge void order passed by the Land Reforms Officer conferring the proprietory rights upon the plaintiff. There is no bar upon the defendant/State to take recourse to review the order of mutation conferring the proprietory rights upon the plaintiff or taking steps for possession under the provisions of the Ceiling Act once the land had vested in the State Government. This plea had been considered by the Civil Court which was competent to consider, which was raised before it and both the Courts below had come to a definite conclusion that the appellant was not entitled to the relief of declaration which findings of fact do not call for an interference by this Court and as such, are liable to be upheld. Both the Courts below had rightly granted the relief of injunction restraining the defendant from evicting

the plaintiff except by due process of law and defendant/State is competent to take action under the provisions of H.P. Ceiling and Land Holdings Act for taking possession or review the order, if this desire under the H.P. Tenancy and Land Reforms Act. There is no merit in the appeal filed by the appellant which is liable to be dismissed and is dismissed accordingly. No order as to costs. Decree sheet be prepared accordingly.

(V.K. Ahuja),
Judge

December 7, 2007
(BSS)